

³ *Requirements for Digital Television Receiving Capability*, FCC 05-1221, ET Docket No. 05-24 (rel. June 9, 2005) (“*DTV Tuner FNPRM*”).

holiday and Super Bowl selling seasons, the Commission should explore the feasibility of an even earlier date. Second, extending the DTV tuner mandate to receivers with screen sizes less than 13” as soon as practicable would ensure that these sets and the unique benefits they provide during times of emergency will function in the post-transition environment. Both actions would be consistent with the Commission’s and Congress’s efforts to promote a successful conclusion to the DTV transition.

I. THE COMMISSION SHOULD ADVANCE THE DATE BY WHICH TELEVISION RECEIVING EQUIPMENT MUST INCLUDE DTV RECEPTION CAPABILITY TO A DATE EARLIER THAN DECEMBER 31, 2006.

MSTV and NAB applaud the Commission for announcing its intention to advance the date on which television receiving equipment must include a DTV tuner from July 1, 2007 to “a date no later than December 31, 2006.”⁴ On that date, all television receivers in the 13”-24” category, as well other receiving devices (*e.g.*, DVD players/recorders, VCRs) that receive television broadcast signals, must include a DTV tuner. The Commission’s announcement recognizes that, although broadcasters have made DTV service available in virtually every corner of the U.S.,⁵

⁴ *DTV Tuner FNPRM* at ¶ 21. This deadline is the final deadline in the Commission’s DTV tuner schedule.

⁵ The Commission recently reported that 1,525 of the 1,722 U.S. television stations with a DTV construction permit or license are broadcasting a digital signal. *See* Summary of DTV Applications Filed and DTV Build Out Status, July 18, 2005, *available at* <http://www.fcc.gov/mb/video/files/dtvsum.html> (last visited July 27, 2005). Indeed, by July 1, 2006, television broadcast stations with a tentative DTV channel designation on their current DTV channel will be required to provide full, authorized service. *See Second Periodic Review of the Commission's Rules and* (continued...)

many consumers still do not have access to the equipment necessary to receive that service. Against this backdrop, Congress is increasingly focused on setting a “hard date” for the end of the DTV transition. Indeed, the television broadcast industry recently informed Congress that it accepted that Congress would soon establish a hard date for terminating analog television service in 2009.⁶ In support of these efforts to reach an early end to the DTV transition, the Commission should encourage the cessation of sales of analog-only television receiving equipment as soon as possible.

First, as the Commission has recognized, the widespread and prompt availability of DTV receivers “protect[s] consumers by ensuring that their television sets go on working in the digital world just as they do today.”⁷ Consumers do not benefit from purchasing new analog sets that will soon become obsolete in the digital world. Yet today, it is difficult (at best) to find a television set in the 13”-24” category with an integrated DTV tuner. Thus, millions of consumers are purchasing analog-only sets without realizing that these sets will soon lack the

Policies Affecting the Conversion To Digital Television, 19 FCC Rcd 18279, at ¶ 78 (2004) (“*Second DTV Biennial Review*”).

⁶ See, e.g., *Hearing on the Digital Television Transition*, Testimony of Edward O. Fritts, President and CEO of NAB Before the Senate Committee on Commerce, Science, and Transportation, July 12, 2005 (“Broadcasters accept that Congress will implement a 2009 hard date for the end of analog broadcasts.”); Anne Veigle, *DTV Bill to be Subsumed in Budget Bill*, Comm. Daily, July 8, 2005 (“A scaled-back DTV provision setting a hard transition date of Jan. 1, 2009 ... will be part of a budget bill to be voted on in mid-Sept., Hill sources say.”).

⁷ *Second DTV Biennial Review*, 19 FCC Rcd. 18279 at ¶ 19.

ability to receive local broadcasters' free, over-the-air television signals and the vital news, information and emergency alerts they provide.

There is little doubt that small screen sizes are popular with consumers. For example, in a 2004 survey by Knowledge Networks/SRI,⁸ survey respondents were asked about the screen size of the largest TV set in their homes.

The results were as follows:

| Set Size: | Household penetration: |
|-----------|------------------------|
| <25": | 23.9% |
| 25-29": | 37.3% |
| 30-35": | 16.7% |
| 36-40": | 8.4% |
| 41-45": | 2.6% |
| 46-50": | 3.2% |
| >50": | 7.9% |

Thus TV sets with screen sizes under 25" are the second most popular category of television sets in America today. Additional research indicates that nearly one-half of all consumers classified their current screen size as between 20-29 inches.⁹ While this may not be an exact correlation to the screen sizes at issue in this proceeding, it indicates that many consumers are using smaller sets as their

⁸ Knowledge Networks/SRI, Home Technology Monitor, 2004 Ownership Survey (Spring 2004).

⁹ Hoffenberg, Steven, "Why Buy? 2005 HDTV Purchase Intent Survey," DTV View, January 2005.

primary TV sets. One can safely assume that many of these sets will be used as second or third sets in the bedroom or kitchen.

Second, and relatedly, each sale of an analog-only set adds to the number of digital-to-analog converter boxes needed to preserve service for the millions of consumers relying solely on reception of broadcasters' over-the-air signals. Accelerating the DTV tuner requirement for these smaller set sizes, which in turn reduces the number of analog-only sets sold to consumers, will reduce the number of sets that will need a subsidized digital-to-analog converter. Given the unsettled nature of the digital-to-analog converter program to be enacted by Congress,¹⁰ the Commission has additional incentive to ensure that as few as possible analog-only sets are sold between now and the impending shutdown of analog broadcasts.

Third, advancing the DTV tuner deadline to a date perhaps even earlier than December 31, 2006 would help ensure that consumers shopping for popular smaller (*i.e.*, under 25") sets during the holiday and Super Bowl selling seasons are not sold analog-only receivers. As the Commission has observed, 40 percent of all TV receivers are sold in the holiday shopping season.¹¹ The Consumer Electronics Association ("CEA") has itself acknowledged the importance of this buying season, noting in 2004 that "[w]ith November 2004 holidays sales of 844,000

¹⁰ See, e.g., Paul Davidson, *Lawmakers Split on Subsidy for Digital TV Converters*, USA Today, May 26, 2005.

¹¹ *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, 12 FCC Rcd. 12809, 12841 (1997).

units, the 10 percent increase in December sales demonstrates that retailers know that an upgrade to a high-definition television (HDTV) is a priority before this year's Super Bowl."¹² CEA's Chief Executive Officer, Gary Shapiro, added that "it comes as no surprise that a hugely popular event such as the Super Bowl encourages fans... to join hundreds of thousands of other consumers in jumping head-first into digital television."¹³

For this reason, moving the deadline even earlier than December 31, 2006 would mean that consumers looking to the 2006 holiday and Super Bowl selling season with DTV purchase plans or with analog set replacement intentions would not face the same dearth of smaller DTV "televisions" available today. With the end of analog broadcasts looming, the public interest would best be served by a DTV tuner deadline that reduces the sale of millions of analog-only sets during the 2006 holiday and Super Bowl selling seasons.

¹² Consumer Electronics Association, Press Room, *Super Bowl XXXIX Boosts Digital Television Sales – Strong December Sales Close Out Record Year* (rel. Jan. 28, 2005), available at http://www.ce.org/press_room/press_release_detail.asp?id=10681 (last visited April 12, 2005).

¹³ *Id.* The Super Bowl is not the sole reason for increased sales in December and January. In the U.K., 2004 holiday sales came close to doubling DTV penetration in that country. See *Record Holiday Sales Propelled U.K. DTV Homes to the 5-Million Mark*, Comm. Daily, Jan. 21, 2005 (noting that 1.5 million digital terrestrial set-top boxes and integrated DTV receivers were sold in the 3 months preceding December 25, 2004).

II. THE COMMISSION SHOULD EXTEND THE DTV TUNER MANDATE TO INCLUDE RECEIVERS WITH SCREEN SIZES UNDER THIRTEEN INCHES.

Receivers and other devices with screen sizes under thirteen inches (“portable sets”) are completely excluded from the DTV tuner mandate. In other words, the Commission’s existing regulations would allow a manufacturer to ship and a retailer to sell an analog-only handheld television just weeks before analog transmissions cease and the set becomes obsolete.¹⁴ MSTV and NAB urge the Commission to close this loophole in the DTV tuner mandate and require manufacturers to include DTV tuners in portable sets and other small-screen display devices that have TV tuner capability as soon as manufacturing cycles would permit.

Portable sets are even more likely than larger sets to rely solely on over-the-air service. A large retailer’s web-guide to the “lowdown on handheld televisions” makes clear that most uses of these sets require over-the-air access: “In a Walkman-toting world, the allure of a hand-carried TV is obvious. A handheld TV can be a great way to accessorize camping trips . . . and road trips or to have on

¹⁴ See, e.g., About.com, Your Guide to TV/Video, *Will My Analog Portable Television become Obsolete when Digital Takes Over*, available at http://tv.about.com/od/frequentlyaskedquestions/f/ana_port_TV_p.htm (“Considering that all-digital broadcasting is coming soon, what happens to small portable TVs like 2” LCD Casios ... I searched the net for new digital-ready portable TV (2”-5”) models, but can’t find any. Yet, there are a lot of analog LCD TVs still being sold? The whole thing just doesn’t make any sense!”).

hand for down times.”¹⁵ Consumers, however, are misled into believing that these sets will continue to function for years to come. As the same guide counsels, “We don’t expect digital reception to arrive until analog broadcasting disappears. That will take more than a decade though, so don’t worry about your investment in portable televiewing.”¹⁶ Plainly, consumers’ interests are not served by the continued sale of analog-only portable sets.

Perhaps most importantly, Americans place significant reliance on portable sets in times of emergency. Because they are typically battery powered, these sets are crucial when natural or manmade disasters leave viewers without access to power. As one report recently noted, “[I]n states in the hurricane belt ... small, battery powered TVs have become must-have items to have during power outages.”¹⁷ In such times, portable sets are consumers’ lifeline to emergency information distributed by their local television broadcasters, such as the location of shelters, evacuation routes, air quality alerts, and the like. These sets, however, are generally not used on a day-to-day basis, so a consumer may not realize that the set has become obsolete (due to cessation of analog broadcasts) until an emergency arises.

¹⁵ *The Lowdown on Handheld Televisions*, Best Buy, available at <http://www.bestbuy.com/site/olspage.jsp?guideID=1043363122099&categoryRep=cat03000&type=page&cmp=&id=cat12077> (last visited July 14, 2005).

¹⁶ *Id.*

¹⁷ Satellite Business News 2, July 11, 2005.

Unlike larger sets, a digital-to-analog converter box could not generally be added to portable sets. First, the converter box is likely to require access to an electrical outlet, thus eliminating the principal benefit of portable sets in times of emergency. Second, the converter box is likely to be at least as large as the set, transforming the set from a portable to a stationary device. Third, and perhaps most notably, many portable sets do not even have RF inputs with which to interface a converter.¹⁸ As a result, analog-only portable sets will truly be obsolete once analog broadcasts cease. The public interest would be served by extending the DTV tuner mandate to sets under 13" in screen size.

¹⁸ *Id.*

CONCLUSION

The availability of television receivers with integrated DTV tuners is crucial to the success of the DTV transition. With a likely end to analog broadcasts looming, MSTV and NAB absolutely support the Commission's proposal to move the DTV tuner deadline to December 31, 2006 and respectfully suggest that the Commission should consider the feasibility of moving that deadline to an even earlier date. Such action will ensure that consumers purchasing sets during that year's crucial holiday and Super Bowl selling seasons have access to DTV receiving equipment. Also, in light of the importance of sets under 13" in screen size during times of emergency and their significant reliance on over-the-air service, the Commission should extend the DTV tuner mandate to these sets as soon as practicable.

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July 27, 2005